

PARENT COUNSEL PERMANENCY PLANNING HEARING CHECKLIST

A.C.A. '9-27-338

Purpose:

Court shall finalize a permanency plan for the juvenile based on the juvenile's best interest. A.C.A. '9-27-338 (a), (c)

Pre-Trial Preparation:

- *A staffing is required to be held prior to the PPH, and an updated case plan must be developed, if needed; make sure to attend and participate in the staffing. Consider mediation in place of the staffing.*
- *Analyze the case to determine whether DHS has done everything it was required to do.*
- *Meet with your client and evaluate your client's wishes, and evidence to support his/her wishes; get reports from therapists, etc.*
- *Make sure you have a permanency planning court report (not just a regular court report), and a CASA report if CASA is assigned.*
- *Get witness lists in advance of trial, and do discovery if necessary. Interview witnesses to be called by opposing counsel.*

Time constraints:

- ⌚ The Permanency Planning Hearing shall be held no later than 12 months after the date the child enters an out-of-home placement, or no later than 30 days after the court files a no reunification services order. The permanency planning hearing shall be held annually each year thereafter to reassess the permanency plan for the juvenile. A.C.A. §9-27-338(a)(1)
- ⌚ DHS shall file a court report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, seven (7) business days prior to the scheduled review hearing. A.C.A. §9-27-361(b)(1)
- ⌚ CASA volunteers shall provide written reports for the court and shall provide all parties or the attorney of record with a copy of the report 7 business days prior to the hearing. A.C.A. §9-27-316(g)(3)(A)(iii); A.C.A. §9-27-361(b)(1)
- ⌚ A written order shall be filed and distributed to the parties by the court, or by a party or party's

attorney as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. A.C.A. §9-27-338(e)

- ⌚ Upon the court's determination that the goal is termination of parental rights, DHS shall file a TPR petition within 30 days of the order. A.C.A. '9-27-338(f)
- ⌚ Nothing shall prevent the state from filing a petition for termination, guardianship or permanent custody prior to any hearing. A.C.A. '9-27-338(b)(1)
- ⌚ If DHS failed to provide services, court shall continue the PP hearing no longer than 6 months. A.C.A. '9-27-338(c)(2)(C)(i)

Best Practice: Judge should explain the purpose of the PPH at the beginning of the hearing.

Present at Hearing:

- ✓ Judge;
- ✓ Parties, including children, unless excused for good cause by court;
- ✓ Attorneys for all parties;
- ✓ CASA volunteer, if appointed;
- ✓ Case worker and relevant witnesses;
- ✓ Foster parents or relative caregivers;
- ✓ Court Reporter

Permanency Plans:

The court shall enter one of the following permanency goals, listed in the order of preference, in accordance with the juvenile's best interest:

- ❶ **Return Home** if child's health and safety can be adequately protected. A.C.A. §9-27-338(c)(1);
 - ✓ Review facts of case and parents' and agency's compliance with case plan and court orders.
 - ✓ Did the services alleviate the reasons for removal? Elicit testimony on what is different now.
 - ✓ How has visitation gone, and has there been a plan to transition home with increased visits while the court continues to monitor the children's health and safety? Emphasize that the parent's attendance at, and efforts to attend visitation, are the most important indicator of successful reunification.

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- ✓ What needs to happen to allow children to return home safely? Set out a specific plan/time frame on how that will occur.
- ✓ What has the agency done to reduce the risk or likelihood of disruption after the children are returned home? Elicit testimony about what safeguards are in place to protect the child.

Best Practice: *Meet with the client to discuss the above issues, and what has happened in the case.*

② TPR unless:

- The child is placed with a relative (who is fit and willing, A.C.A. §9-27-338(c)(5)), and TPR is not in the child's best interest;
- The parent, guardian, or custodian (PGC) is complying with the case plan and orders of the courts, *and* making significant measureable progress toward achieving the goals established in the case plan, *and* diligently working toward reunification (a PGC's resumption of contact or overtures toward participating in the case plan or following the orders of the court in the weeks immediately preceding the permanency hearing are insufficient grounds for authorizing a plan to return home; however, counsel can remind the court that relapse is a part of recovery);
- Compelling reason not to terminate exists; or
 - DHS failed to provide services. **A.C.A. '9-27-338(c)(2)**

Note: *DHS' failure to provide services is a valid reason not to terminate. Check the dates of referrals (i.e., if addiction was your client's major problem and DHS didn't refer the client for a drug and alcohol assessment for six months and didn't get your client into treatment for another three months, argue that DHS didn't provide appropriate services timely, and your client should be allowed more time).*

- ✓ Is there a statutory exception not to terminate?
- ✓ Is TPR in the child's best interest?
- ✓ What specifically are the plans for the child to be adopted?
- ✓ If TPR, are there putative parents with rights?
- ✓ Who is entitled to notice of TPR?

- ✓ Can TPR be achieved without trial through voluntary relinquishment, or mediation, to avoid harm to the child?
- ✓ To avoid trial delays, schedule pre-trial with all attorneys to ensure proper service, exhibits, and witness list are shared prior to hearing, and adequate time is scheduled on the docket for the hearing.

Best Practice: *If appropriate, question whether DHS has a valid permanency plan for the child (i.e., if the child is 13 and insistent that he or she doesn't want to be adopted, argue that there is no point in terminating parental rights because adoption is unlikely). Minors over 10 have to consent to adoption and have 10 days to withdraw that consent. The judge may waive both the consent and the time period to withdraw consent (A.C.A. 9-9-206(a)(2)(5)).*

③ Guardianship, A.C.A. '9-27-338(c)(4)

- ✓ What are the child's needs, wishes and best interests?
- ✓ Are there convincing reasons that the child cannot return home or be adopted?
- ✓ Is this the best guardian for the child and does he/she have a commitment to remaining in the child's life?
- ✓ Have home study and all background checks been completed?
- ✓ Will the guardian need financial assistance to care for the child?
- ✓ Does the guardian understand his/her rights and responsibilities?
- ✓ Will there be ongoing contact with the child's parents and siblings?
- ✓ Will the agency still provide services or provide some ongoing monitoring?

Best Practice: *Discuss this option with your clients. It is statutorily favored over permanent custody.*

④ Permanent Custodian A.C.A. '9-27-338(c)(5)

- ✓ What are the child's needs, wishes, and best interests?
- ✓ Why is this a better plan than return home, adoption, or guardianship?
- ✓ Does the child have a bond with the custodial family?

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- ✓ Have home study and all background checks been completed?
- ✓ Will the custodian need financial assistance or services to care for the child?
- ✓ Does the custodian understand his/her rights and responsibilities?
- ✓ Will there be ongoing contact with the child's parents and siblings?
- ✓ Has this custodian made a long-term commitment to the child?

⑤ Continue Reunification only if:

- parent is complying with case plan and court orders, and making significant measurable progress toward reunification (A.C.A. §9-27-338(c)(2)), and
- reunification can occur within time frame consistent with child's developmental needs (A.C.A. §9-27-338(c)(2)(C)).

***Note and Best Practice:** The burden is on parent counsel and the PGC to demonstrate genuine, sustainable investment in completing the requirements of the case plan, and following the orders of the court, before a permanency goal of return home can be authorized. Present evidence and elicit testimony at the PPH that the PGC is making significant and measurable progress towards remedying the conditions that caused and continued the juvenile's removal from the home. Also present evidence/testimony showing that the return can safely occur within a time frame that is consistent with the juvenile's developmental needs. Three months is almost always an appropriate goal.*

⑥ Plan for Another Planned Permanent Living Arrangement (APPLA) only if:

- child cannot be reunited with family;
- another permanent plan is not available; and
- there is a compelling reason not to TPR, and it is not in the child's best interest, or a child is being cared for by a fit and willing relative (A.C.A. §9-27-338(c)(6)).
- APPLA shall address the quality of services, including independent services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive (A.C.A. §9-27-338(c)(6)(A)).

***Best Practice:** Discuss APPLA with your client if it is appropriate for his/her child.*

- ✓ What are the child's needs, wishes, and best interests?
- ✓ Why is this a better plan than return home, adoption, guardianship, custody, or continued reunification?
- ✓ What support and independent living services will be provided to the juvenile to ensure that the juvenile will be able to transition out of foster care, and be able to care for him/herself?
- ✓ What is the educational plan for the juvenile?
- ✓ What is the plan for supervision and structure for the juvenile? Does the agency have a mentor for the juvenile?
- ✓ What additional specific services will the juvenile need to successfully transition to adulthood?

IV-E COURT FINDING REQUIRED

The court shall make a finding on whether DHS has made reasonable efforts, and shall describe the efforts to finalize the permanency plan for the juvenile (A.C.A. § 9-27-338(d)).

***Note:** If a finding of reasonable efforts to finalize the permanency plan is not made within 12 months of the date the child comes into care, the child becomes ineligible for IV-E funding from the end of the 12th month following the date the child is considered to have entered foster care, or the end of the month of the most recent judicial determination to finalize permanency was made, and remains ineligible until such a determination is made (45 CFR Sec. 1356.21(b)(2)(i)).*

***Note:** Make sure to review the court order for accuracy and completeness!!*

***Best Practice:** Based on the Permanency Plan approved for the child, the court should schedule the next hearing for a date and time specific. The court should set clear expectations for all parties in regard to what needs to occur before the next hearing, and explain the purpose of the next hearing.*